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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,885	03/04/2002	Dean R. Brown	PWP0002/US/2	6454
33072	7590	05/11/2004	EXAMINER	
KAGAN BINDER, PLLC SUITE 200, MAPLE ISLAND BUILDING 221 MAIN STREET NORTH STILLWATER, MN 55082				FIDEI, DAVID
ART UNIT		PAPER NUMBER		
				3728

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/090,885	BROWN, DEAN R.
	Examiner David T. Fidei	Art Unit 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-12 is/are pending in the application.
 - 4a) Of the above claim(s) 11, 12 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____. |

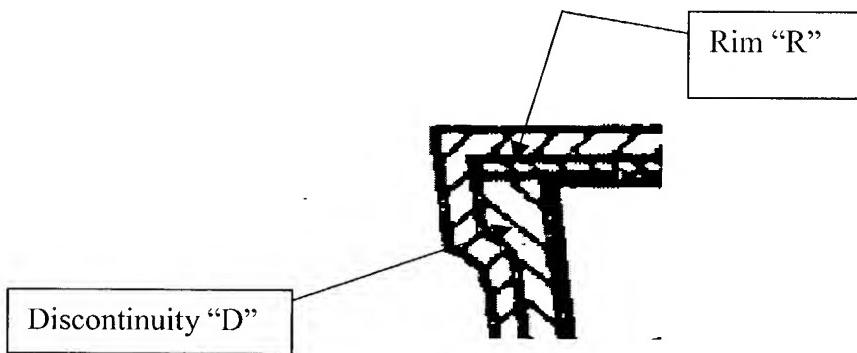
Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 2, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Ando (Patent no. 3,976,795). As to claim 1 (amended), Ando discloses a container (1) for storing items, comprising: a container bottom; a side wall extending upward from said bottom and terminating in a rim (R, shown below defined as that planar surface where the lid attaches to the container) defining the periphery of said container, said side wall tapering from top to bottom; a lid (5) covering said container; a surface discontinuity (D, shown below) disposed on said side wall intermediate said rim and said container bottom: and a layer of shrinkwrap (7).



The shrinkwrap film of Ando is described as heat contracted to such a degree that it adheres airtight to the container 1, see col. 3, lines 6-8. Hence, the layer of shrinkwrap is formed to and clings to at least a portion of said tapered side wall, wherein said layer of shrinkwrap is formed to and covers said surface discontinuity and conforms to the shape thereof.

As to claim 2, the layer of shrinkwrap is formed to at least a portion of said lid , see figure 1 of Ando.

As to claim 6, said shrinkwrap layer comprises an integral piece of shrink wrap as shown in figure 1.

As to claim 7, said shrinkwrap layer covers the outer periphery of said lid.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

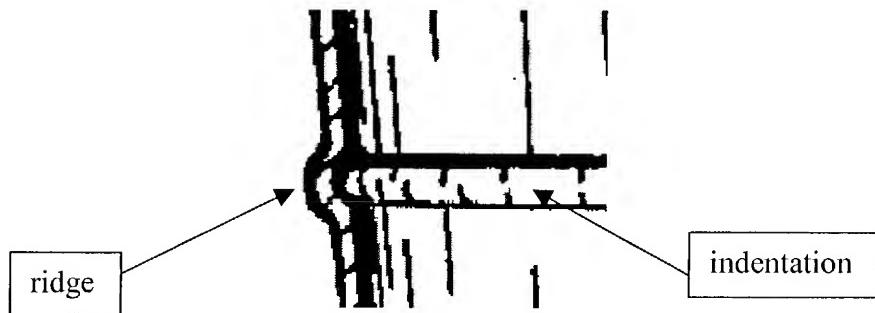
4. Claim 1, 2 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ando (Patent no. 3,976,795) in view of Karevaara (Patent no. 4,102,454). Ando discloses a container (1) for storing items, comprising: a container bottom; a side wall extending upward from said bottom and terminating in a rim (R, taken to be defined as that planar surface where the lid attaches to the container) defining the periphery of said container, said side wall tapering from top to bottom; a lid (5) covering said container; a surface discontinuity (D, shown above) disposed on said side wall intermediate said rim and said container bottom: and a layer of shrinkwrap. The difference between claims 8-10 and Ando, resides in the kind of surface discontinuities formed.

Claim 8 reciting the container of claim 1, wherein said surface discontinuity comprises an indentation.

Claim 9 depending from claim 8, wherein said indentation comprises a ridge extending continuously around said container side wall.

Claim 10 reciting the container of claim 1, wherein said surface discontinuity comprises a plurality of indentations disposed on said side wall.

Karevaara is cited for the teachings of figures 1-7. In figure 2, an indentation is defined on the inside surface of annular projections 5, 6 that also forms a ridge extending continuously around the container side wall (as per claims 8 & 9). Note representation below.



As to claim 10, a plurality of indentations can be said to be disclosed by Karevaara in that there are two indentations formed on the inside surface of the container side wall at each location of projections 5 & 6. Hence, Karevaara teaches the subject matter of claims 8-10.

It would have been obvious to one of ordinary skill in the art to modify the relatively smooth sidewall surface of Ando by constructing a plurality of indentations disposed on the side wall, wherein said indentation comprises a ridge extending continuously around said container side wall as taught by Karevaara, in order to facilitate separation when stacking the containers in storage or transportation prior to filling with the food product. The motivation for this combination are surfaces discontinuities provide an air space between containers when they are vertically stacked. Stacking occurring for storage or transportation of containers to a designated source. Stacking can also occur in packaging filling machines or stations. This air space inhibits similarly stacked containers from sticking together when they are separated.

With regards to claim 1, the aforementioned modification results in the subject matter recited therein.

As to claim 2, the layer of shrinkwrap is formed to at least a portion of said lid , see figure 1 of Ando.

As to claim 6, said shrinkwrap layer comprises an integral piece of shrink wrap as shown in figure 1.

As to claim 7, said shrinkwrap layer covers the outer periphery of said lid.

5. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 2 above, and further in view of Marino, Jr. et al. (Patent no. 5,605,230). The difference between claim 3 and Ando (Patent no. 3,976,795), or Ando (Patent no. 3,976,795 modified in view of Karevaara (Patent no. 4,102,454), resides the container of claim 2, wherein said shrinkwrap layer further comprises a tear originating at a top portion thereof and extending downward along said side wall, said shrinkwrap layer being substantially separated from said lid and rim yet substantially clinging to said side wall, whereby said lid can be opened or removed yet said shrinkwrap layer clings to said side wall.

Marino, Jr. et al teaches a shrinkwrap sleeve 24 that also includes a vertical line of perforations 26a for separation of the removed upper portion 24a of the sleeve 24 from the cap 20. Upon removal of the upper portion 24a of sleeve 24, the lower sleeve portion 26a remains on the base 14, covering the label 22. Removal of the upper portion 24a also exposes the cap so that it may be removed for access to the inside of the bottle 12, see col. 2, lines 49-54. It would have been obvious to one of ordinary skill in the art to modify the film 7 of Ando (Patent no. 3,976,795) by constructing a tear originating at a top portion thereof and extending downward along said side wall, said shrinkwrap layer being substantially separated from said lid and rim yet substantially clinging to said side wall, whereby said lid can be opened or removed yet said shrinkwrap layer clings to said side wall as taught by Marino Jr. et al. The motivation for the combination is to facilitate opening of the container by at least partial removal of the film.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 2 above, and further in view of Gray, Jr. (Patent no. 5,489,126). The difference between the claimed subject matter and Ando reside in the use of an adhesive free label. Gray teaches that it is known to those skilled in the art to construct adhesive free labels 20 between the shrink-wrap and object wrapped. This is listed as particularly desirous when the label has difficulty adhering to the article. It would have been obvious to one of ordinary skill in the art to

construct the container of Ando with an adhesive free label as taught by Gray, for the reason of providing a product identification bar code.

7. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 2 above, and further in view of Kaufman (Patent no. 6,247,612). The difference between claim 4 and the prior art resides the container further comprising an adhesive-free label disposed between said shrinkwrap layer and said container side wall, said shrinkwrap layer holding said label in place. The difference between claim 5 and the prior art resides in the container further comprising a label adhesively affixed to the outside of said shrinkwrap layer about said side wall.

Kaufman discloses a package in figure 2 where the promotional item 40 includes a packaging material 42 which is preferably a sheet of transparent material, such as a sheet of transparent polymeric material. This transparent material is known in the field as shrink-wrap. Also included as part of the promotional item 40 is a label 44 which has appearing thereon the marketing indicia, such as the logo and/or the trademark associated with the product item 50 (not shown). The label 44 may be positioned between the compressed fabric article and the packaging material 42 or may be positioned directly on the packaging material 42. The label is typically printed paper with the colors and logo of the product being dispensed .

It would have been obvious to one of ordinary skill in the art to modify the container of Ando by employing an adhesive-free label disposed between said shrinkwrap layer and said container side wall, said shrinkwrap layer holding said label in place as taught by Kaufman. Or in the alternative, it would have been equally obvious to one of ordinary skill in the art to provide a label adhesively affixed to the outside of said shrinkwrap layer about said side wall as is also taught by Kaufman. The motivation for this combination is to provide product information, advertisement, coupons, logo's, directions for use, prizes or any of myriad of known uses to those skilled in the packaging art. Ando lacks any teaching of how the food product is identified. Also, logo's or indicia provide the consumer with rapid product identification thus enhancing the desirability of buying a product. One skilled in the art would

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have found it highly desirability, if not practically necessary, to associate a label with the product of Ando. Providing a label either underneath or on the film 7 represents nothing novel in the art.

Since a label underneath the film would be held by the film and some type of attachment would be required to make the label adhere to the outside of the film, the requirements of adhesive-free or adhesive is not viewed as defining an unobvious difference. Rather it would be well within the level of ordinary skill to provide an inside label adhesive-free while the outside label includes an adhesive. The level of ordinary skill determined by the prior art of record where it is shown to provide adhesive to attach labels and adhesive-free labels are known for its use in conjunction with shrinkwrap.

Response to Arguments

8. Applicant's arguments filed March 15, 2004 have been fully considered but they are not persuasive. The arguments appear to require more of the claims than where originally recited. Applicant implying the present invention provides a tapered container and shrinkwrap wherein the container has one or more features that allow the shrinkwrap to cling to the tapered side wall.

First, the prior claims only required a side wall that tapered from top to bottom. As noted in the previous paragraph (9), tapering can be construed to only mean smaller toward one end, Merriam-Webster Online Dictionary. There was nothing in the prior claims that necessarily required the whole container be tapered. Only a portion of the sidewall could be tapered with the side wall including some type of discontinuity where the shrinkwrap was formed to the side wall and covering the discontinuity and conformed to the shape thereof. Rashid included a container with a "side wall" defined by at least sections 16, 18, 20, and 28 from top to bottom. The side wall becomes progressively smaller toward one end, i.e., at neck 16 the side wall tapering (outwardly) from top to bottom. Moreover, original claim 1 did not even require a shrink wrap. It is unclear how applicant could expect Rashid to deal with the problem associated with a container that has one or more features that allow the shrinkwrap to cling to the tapered side wall where the shrinkwrap is *not even claimed as part of the invention*. While Rashid does include a shrinkwrap it is not adhered to the tapered portion 16 of the side wall as newly added to claim 1.

Secondly, the specification page 2, lines 15-20 addresses the problem solved by the present invention and further argued on page 4, last paragraph to page 5 of applicant's remarks. However, this subject matter is not germane to any of the claims. None of the claims include the entire combination of a container, tapered side wall, a lid, a discontinuity, a shrinkwrap conformed to the tapered side wall and the discontinuity, a label and a tear originating at a top portion thereof and extending downward along said side wall, said shrinkwrap layer being substantially separated from said lid and rim yet substantially clinging to said side wall, whereby said lid can be opened or removed yet said shrinkwrap layer clings to said side wall. The various elements of the invention set forth in the newly presently claims have been considered to the extent claimed.

Even as such the subject matter is *prima facie* obvious. Ando (Patent no. 3,976,795) discloses a tapered container consistent with applicant's interpretation. Marino, Jr. et al teaches a shrinkwrap sleeve 24 that also includes a vertical line of perforations 26a for separation of the removed upper portion 24a of the sleeve 24 from the cap 20. Upon removal of the upper portion 24a of sleeve 24, the lower sleeve portion 26a remains on the base 14, covering the label 22. Removal of the upper portion 24 a also exposes the cap so that it may be removed for access to the inside of the bottle 12, see col. 2, lines 49-54. The tear opening arrangement of provides a portion of the shrink wrap that remains intact and protects the label 22 of Marino, Jr. et al even though it is not required of claim 3.

It is not agreed the reference to Gray, Jr. can be dismissed because it does not even relate to a container. Gray, Jr. relates to the problem of retail packaging and the shrinkwrap label art. To provide goods for retail sale adhesive bar code labels do not properly stick to the surface of the pipe and fall off. This can be a very annoying and a time consuming problem. Particularly when bar code readers are practically all that is used in retail outlets. Gray Jr. teaches the use of shrinkwrap to the retain the label in place. Ando relates to a packaging for a dehydrated food product such as soup, col. 1, lines 10-16. One skilled in the packaging art would find Gray Jr. extremely pertinent and relevant to Ando. Particularly to provide a bar code label so that the

product of Ando may be readily scanned. Accordingly, the rejection has been maintained to the extent as is applicable in light of the new amendments to claim 1.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Patent Electronic Business Center (EBC) will be the organizational contact for Patent Business external customers regarding questions about IFW images viewed in Private PAIR. External customers should be directed to EBC representatives, who can be reached at 703-305-3028 or toll free at 866-217-9197 between the hours of 6 a.m. and midnight Monday through Friday EST, or by e-mail at: ebc@uspto.gov. Additional information is available on the Patent EBC Web site at: <http://www.uspto.gov/ebc/index.html>.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648; email CustomerService3700@uspto.gov .

Any inquiry concerning the MERITS of this examination from the examiner should be directed to David T. Fidei whose telephone number is (703) 308-1220. The examiner can normally be reached on Monday, Thursday and Friday 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached at (703) 308-2672.

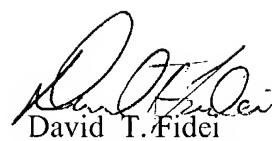
Effective Monday morning, August 4, 2003, all official faxes for the TCs will be received in one central location in the Office. In cooperation with the Customer Service Goal Team, a new central official fax number (703-872-9306) has been established for use by the TCs. An OG notice will be issued and the Website updated to alert PTO customers of the new fax number. Official standalone (non-RightFax) fax machines will be removed from the TC fax centers, their phone numbers auto-forwarded to a single RightFax account, and faxes printed in the centralized fax center.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8497
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If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

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David T. Fidei
Primary Examiner
Art Unit 3728

dtf
May 10, 2004